

FILED  
SUPERIOR COURT  
OF GUAM

2019 FEB 11 PM 1:52

CLERK OF COURT

By: \_\_\_\_\_

IN THE SUPERIOR COURT OF GUAM

PEOPLE OF GUAM,

Plaintiff,

Criminal Case No. CF0619-18

vs.

**DECISION AND ORDER**

GERALD WAYNE CRUZ II,  
aka Gerard Wayne Cruz II,

Defendant.

**INTRODUCTION**

Defendant is charged with two felony counts for shooting a neighbor's dog and a neighbor's cat. He moves to dismiss these charges on the basis that the indictment fails to allege facts that would support the charges. This matter is before the Honorable Michael J. Bordallo.

The People are represented by Assistant Attorney General Charles J. Kinnunen. Defendant Gerald Wayne Cruz II ("Defendant") is represented by Assistant Public Defender William C. Bischoff of the Public Defender Service Corporation. Having reviewed the arguments, the Court **GRANTS** Defendant's motion to dismiss the charges of two counts of Animal Cruelty (As a 3<sup>rd</sup> Degree Felony).

## BACKGROUND

An indictment was originally issued against Defendant in October 2018, but two months later, a superseding indictment was issued on Dec. 13, 2018, charging him with two counts of Animal Cruelty (As a Third Degree Felony), each with accompanying counts of Special Allegation of Possession or Use of a Deadly Weapon in the Commission of a Felony. He was also charged with Unsworn Falsification, a misdemeanor. The felony charges are based on violations of 9 G.C.A. § 70.10.1(a)(1) (which is entitled Animal Abuse, not Animal Cruelty, as incorrectly stated in the indictment). Defendant moved for dismissal of the felony portion of the indictment on Dec. 27, 2018. The People did not file an opposition. This Court then took the matter under advisement.

## FACTS

1. Defendant is accused of shooting and killing a neighbor's cat in May 2018 and a neighbor's dog in September 2018.
  2. The People have charged him with Animal Cruelty (As a 3<sup>rd</sup> Degree Felony), meaning that he is charged with intentionally, knowingly, or recklessly causing serious physical injury to the animals, cruelly causing their death, or torturing them. 9 G.C.A. § 70.10.1(a)(1).
  3. Defendant argues that the indictment is deficient because it states only that he shot the animals, not that he cruelly killed them or tortured them, as required to violate § 70.10.1.

## ISSUE

1. Whether to dismiss the felony charges in the superseding indictment for failing to allege facts that support the charges.

## **PRINCIPLES OF LAW**

A person is guilty of first degree animal abuse if he intentionally, knowingly, or recklessly causes serious physical injury to an animal, cruelly causes its death, or tortures it. G.C.A. § 70.10.1(a)(1). First degree animal abuse is a third-degree felony. Id. at (b). Torture is an action taken “for the primary purpose of inflicting pain.” Id. at § 70.01(i). “Animal” in these statutes means a domestic animal or a household pet. Id. at (a). Guam statute does not define “cruelly” or “cruelty,” but Black’s Law Dictionary defines “cruelty” as “The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage.” *Cruelty*, Black’s Law Dictionary (10th ed. 2014), available at Westlaw.

The Supreme Court of Guam has stated that an indictment is sufficient if “it contains the elements of the crime alleged.” Guam v. Jones, 2006 Guam 13 ¶ 12. It also states, “[A] well drafted indictment would clearly lay out all of the elements of the crime.” Id. at ¶ 20.

## ANALYSIS

The statute Defendant is alleged to have violated does not concern whether he killed the animals but whether he killed them cruelly. Serious physical injury is not at issue here because Defendant is accused of killing the animals, not just creating a substantial risk of their deaths or otherwise physically harming them. See 9 G.C.A. § 70.01(h). Torture is also not at issue because Defendant is not accused of having the primary purpose of inflicting pain. See Id. at (i). The question is whether Defendant cruelly caused the death of the dog and cat.

22 It is difficult to think of a less cruel way to kill an animal than death by gunshot. If  
23 Defendant were accused of shooting to maim or shooting to injure the animals, the case might  
24 be different. But the indictment accuses him only of “shooting a dog” and “shooting a cat.”  
25 Superseding Indictment 2. The Magistrate’s Complaint states that Defendant shot the cat, threw  
26 its body in his truck, and drove off. Magistrate’s Complaint 3. Apparently the cat died

1 immediately, and the indictment offers no facts that either the cat or dog suffered before dying  
2 or that Defendant intended that they suffer. The indictment also does not say that Defendant  
3 intentionally inflicted mental or physical suffering on the animals, as required by the Black's  
4 Law definition of cruelty.

5 Defendant cites a Pennsylvania case that is similar to this case: Commonwealth v.  
6 Ulrich. In that case, the defendant shot and killed a dog on his farm out of fear the dog would  
7 harm his calves. Commonwealth v. Ulrich, 1999 PA Super. 1071. The Superior Court of  
8 Pennsylvania, an intermediate appellate court, declined to find that this shooting was cruelty to  
9 animals, absent additional abuse. Id. The defendant shot the dog once and then the dog ran off.  
10 The defendant followed it and shot it three more times before it died. Defendant was charged  
11 and convicted for cruelty to animals under Pennsylvania law. On appeal, the court stated that  
12 "Appellant's crime, if any, was his intentional killing of a domestic animal not his own. The  
13 crime he was charged with under 18 Pa.C.S.A. § 5511(c), however, is inapplicable because it  
14 covers a range of abuses simply not present in this circumstance." Id. The court added that the  
15 defendant was "regrettably, charged under the wrong section of the statute" (id.) and it vacated  
16 his sentence.

17 The current case is similar. The facts alleged about Defendant do not contain the  
18 elements necessary for him to be convicted under 9 G.C.A. § 70.10.1(a)(1). The indictment does  
19 not accuse him of cruelty when he allegedly shot the animals. Defendant, like the Pennsylvania  
20 defendant, would have been more appropriately charged under a different section, such as 9  
21 G.C.A. § 70.10(a)(3). That section reads, "A person commits the crime of animal abuse in the  
22 second degree if the person intentionally, knowingly or recklessly kills, impounds or injures any  
23 animal belonging to another without legal authority or consent of the owner." Id. at (a)(3). The  
24 Supreme Court of Guam stated in Guam v. Jones that the indictment must contain all elements  
25  
26

1 of the crime alleged, but the indictment here does not. Because the indictment accuses  
2 Defendant of shooting the animals, but not cruelly killing or torturing them, the felony charge  
3 will be dismissed.

4 **CONCLUSION AND ORDER**

5 For the reasons set forth above, the Court **GRANTS** Defendant's motion to dismiss the  
6 charges against him of two counts of Animal Cruelty (As a 3<sup>rd</sup> Degree Felony).

7  
8 SO ORDERED, this 11<sup>th</sup> day of Feb 2019.  
9

10  
11 Original Signed By:  
12 Honorable Michael J. Bordallo

13 HONORABLE MICHAEL J. BORDALLO  
14 Judge, Superior Court of Guam  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

I do hereby certify that the foregoing  
is a full true and correct copy of the  
original on file in the office of the  
clerk of the Superior Court of Guam.  
Dated at Hagåtña, Guam.

 FEB 11 2019

Curtis M. Aulerio  
Deputy Clerk, Superior Court of Guam

*Albion* — *Journal of Sociology*